IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8797 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8797 of 2002

MR SAURABH G AMIN for Petitioner No. 1-2

Mr.Sood, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 19/06/2003

ORAL JUDGEMENT

With the consent of parties, when the matter is called our for hearing on interim relief, the petition is

taken up for final hearing.

2. The short facts of the case are that the petitioners was holding the licence for Benzene and the same could not be renewed. However, on 22.9.01 a search and seizure took place and it was found by the authority that the licence has expired on 19.7.01 and goods were seized and show cause notice was given to the petitioners for forfeiture of the goods which were seized . The petitioners submitted reply and the Collector passed the order, dated 22.1.02 of seizure of 100% of the seized goods which would would be 50% of the total quantity because the Mamalatdar had seized only 50% of total quantity at the time when the search and seizure took place.

3. The petitioner preferred appeal being Criminal Appeal No.6/02 before the Addl.Sessions Judge, Bharuch. The learned Sessions Judge found that the licence was not renewed and inspite of the same the petitioner had sold the goods and therefore the quantity forfeited is 50% and therefore matter does not require interference and hence the appeal was dismissed. Under these circumstances, the petitioners has approached this court by this petition.

4. Ld.Counsel Mr.Amin appearing for the petitioner submitted that subsequently the licence has been renewed and such renewal is with retrospective. He has also produced on record the copy of the renewed licence at annexure "E. He, therefore, submitted that in any event now the licence is renewed and it is a technical lapse on the part of the petitioner and lenient view may be taken.

5. On behalf of respondents, Ld.AGP Mr.Sood is not in a position to deny the fact that the licence is not renewed. However, he submitted that the discretion which was exercised may not be interfered by this court.

6. Having considered the above and, more particularly, the judgment and order passed by the Collector as well as by the appellate court it does appear that the main basis for forfeiture was non renewal of licence. The licence had expired on 19.7.01 and the inspection took place on 22.9.01. Had it been the case where the licence was not even renewed the matter would have been different.

7. The peculiar and rather important aspect of the present case is that the licence has been renewed subsequently with retrospective effect from the date of its expiry in July 2001 and therefore when the licence

has been renewed on 28.11.2001 with retrospective effect the Collector while passing the order on 22.1.2002 ought to have considered the said aspects or in any case he could have considered that lenient view to some extent is required to be taken. Since it can be said that the lapse in submitting renewal application for some time is a breach, the said breach is not so serious which would call for 100% forfeiture of goods already seized. The Appellate Authority has also not considered the said aspects except by observing that since 50% of the total quantity is seized the order does not call for any interference. It appears that the Collector as well as the appellate authority have not examined as to whether it is a case which calls for 100% forfeiture or in other words 50% forfeiture of total quantity or not. It is well settled that the authority is not required to exercise power in every case for 100% forfeiture of the goods for breach. It has to consider the matter as to whether 100% forfeiture is called for or not. Since no reasons on the said aspects are recorded by the lower authority the order to the extent of 100% forfeiture of the goods seized, in my view, can be said to be error apparent on the face of the record.

8. However, instead of remanding the matter to the authority concerned for rehearing and considering the matter afresh, I find that as per the decision of this court in the matter of M/s Govind Karsan & Co vs State of Gujarat & Ors reported in 1983 GLH 24 and as per the decision of the Division Bench of this court in the matter of Patel Ambaram Kuberbhai vs State of Gujarat & Ors reported in 1998(2) GLH 533, when the licence is renewed with retrospective effect and the breach can be viewed leniently. If the matter is remanded to the authority it would result into unnecessary delay of the proceedings and consequently it may result into wastage of public time. Therefore, considering the peculiar circumstances of the case, I am inclined to consider the matter.

9. Even otherwise, on merits and on the question of forfeiture of goods the learned counsel appearing for the petitioner has submitted that if the penalty is substituted by 25% of the total goods, i.e. 50% of the goods seized, the petitioner would be satisfied. Therefore, I find that considering the facts and circumstances of the case that the penalty of forfeiture deserves to be modified in view of the peculiar facts that the licence is renewed with retrospective effect and if the strict interpretation is called for it can be said that on the date when the seizure took place on account

of subsequent renewal of licence there was no serious breach.

10. In view of the aforesaid discussion the order dated 22.1.2002 passed by the Collector and its confirmation thereof by the order, dated 21.6.02 in Criminal Appeal No.6/02 by the Ld.Addl.Sessions Judge are confirmed so far the forfeiture of the goods are concerned, but they are quashed so far as forfeiture of 100% of the seized goods and the order of forfeiture of the Collector and its confirmation thereof by the Addl.Sessions Judge shall stand modified to the extent that the goods shall stand forfeited only to the extent of 50% of the total quantity of seized goods (25% of the total quantity at the time of inspection by the Mamalatdar).

11. Petition is allowed to the aforesaid extent. Rule is made absolute accordingly to the aforesaid extent. There shall be no order as to costs.

19.6.03 (JAYANT PATEL,J)